

O  
JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

11 NORMAN SWANSON, Derivatively ) Case No. SACV 07-00310 DDP (JTLx)  
12 on behalf of New Century )  
13 Financial Corporation, ) **ORDER GRANTING MOTION TO DISMISS**  
14 Plaintiff, ) [Motion filed on May 21, 2009]  
15 v. )  
16 ROBERT K. COLE; WILLIAM J. )  
17 POPEJOY; BRAD A. MORRICE; )  
18 DAVID EINHORN; MARILYN A. )  
19 ALEXANDER; PATTI M. DODGE; )  
20 HAROLD A. BLACK; TAJ S. )  
21 BINDRA; DONALD E. LANGE; )  
22 EDWARD F. GOTSCALL; )  
23 FREDERIC J. FORSTER; MICHAEL )  
24 M. SACHS and RICHARD A. ZONA )  
25 and NEW CENTURY FINANCIAL )  
26 CORPORATION, a Maryland )  
27 corporation, )  
28 Defendants.

---

24 This matter comes before the Court on a Motion by the New  
25 Century Liquidating Trust as successor to New Century Financial  
26 Corporation to Dismiss this derivative action. The Liquidating  
27 Trust argues that a derivative action on behalf of the corporation  
28 is the property of New Century's bankruptcy estate, which it has

1 the exclusive right to pursue. As there has been no Opposition to  
2 this Motion by the Plaintiff, the Court grants the Motion.

3 The Local Rules for the Central District of California require  
4 a party opposing a motion to file either an opposing brief or a  
5 statement of non-opposition "not later than fourteen (14) days  
6 before the date designated for the hearing of the motion." C.D.  
7 Cal. L.R. 7-9. The Local Rules further provide that a party's  
8 "failure to file any required paper, or the failure to file it  
9 within the deadline, may be deemed consent to the granting or  
10 denial of the motion." C.D. Cal. L.R. 7-12.

11 The Liquidating Trust filed this Motion on May 21, 2009, and  
12 noticed the Motion for a June 15, 2009 hearing. Plaintiff's  
13 opposition was therefore due on June 1, 2009.<sup>1</sup> As of the date of  
14 this Order, Plaintiff has yet to file an Opposition or a Statement  
15 of Non-Opposition. Additionally, Plaintiff has not filed a request  
16 for the Court to continue the hearing date or for other relief.  
17 The Court deems Plaintiff's failure to respond to the Motion as  
18 consent to the granting of the Motion, grants the Motion, and  
19 dismisses Plaintiff's Complaint.

20 IT IS SO ORDERED.

21

22

23 Dated: June 11, 2009

24

25

26

27

28



DEAN D. PREGERSON  
United States District Judge

---

<sup>1</sup>The Court notes that Plaintiff is represented by counsel.